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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,039	08/29/2006	Robert Dowe	67,173-002	6478

7590 10/16/2008  
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Birmingham, MI 48009

EXAMINER
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PIERCE, WILLIAM M

ART UNIT	PAPER NUMBER
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3711

MAIL DATE	DELIVERY MODE
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10/16/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/591,039	<b>Applicant(s)</b> DOWE, ROBERT	
	<b>Examiner</b> William M. Pierce	<b>Art Unit</b> 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

Claims 1, 2-7 and 11-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Elum 5,566,942 as set forth in the previous office action and below in response to applicant's remarks.

### ***Claim Rejections - 35 USC § 103***

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elum in view of Ferguson 4,65,971 as set forth in the previous office action and below in response to applicant's remarks.

Claims 1, 2 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over LiDonnici P. E. (US 2004/0183253) in view of Elum (US 5,566,942) as set forth in the previous office action and below in response to applicant's remarks.

Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over LiDonnici P. E. (US 2004/0183253) in view of Elum (US 5,566,942) in view of Harris et al. (US 6,491,300) as set forth in the previous office action and below in response to applicant's remarks.

### ***Conclusion***

Applicant's arguments filed 6/27/08 have been fully considered but they are not persuasive.

Applicant remarks that the instant amendments have added a "diagramless grid" and that such does not include "black spacer squares shown in Elum" and requests the removal of the rejection. Turning to the specification, the only discussion of the nature of a diagramless puzzle is in the "background" on pg. 1. However, this is not

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considered to be an explicit definition of what applicant meant by the use of the term "diagramless grid". Here in the background it is a discussion of the general nature of crossword puzzles and the many variations found in the art. Additionally there is no one meaning understood in the art of games to the term diagramless grid. As such, limitations relied upon by applicant such as "no black squares" do not distinguish over the art since they will not be read into the claims from the specification.

Applicant's second argument relates to intended use or function rather than structure of the puzzle. As such, on its face this argument is unpersuasive. In considering any structure implied by the function recited, Elum is considered to be capable of meeting the function of where his number is considered to relate "a location of the first space...to a location of the second space".

LiDonnici shows a blank puzzle grid absent of any marks to guide a player in the solution of the puzzle. Adding the indicia such as numbers and shading in Elum to LiDonnici in order assist the players in solving the puzzle would have been obvious.

Harris is applied to claim 4 and the limitations that the spaces include a midpoint and a symmetric pattern. Such a design is known in game boards as taught by Harris. To have design Elum symmetrically would have been obvious to have made it more aesthetically appealing.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Pierce whose telephone number is 571-272-4414 and E-mail address is bill.pierce@USPTO.gov. The examiner can normally be reached on Monday and Friday 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, communication via email at the above address may be found more effective. Where current PTO internet usage policy does not permit an examiner to initiate communication via email, such are at the discretion of the applicant. However, without a written authorization by applicant in place, the USPTO will not respond via Internet e-mail to any Internet correspondence which contains information subject to the confidentiality requirement as set forth in 35 U.S.C. 122. A paper copy of such correspondence will be placed in the appropriate patent application. The following is a sample authorization form which may be used by applicant:

*"Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me by responding to this inquiry by electronic mail. I*

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*understand that a copy of these communications will be made of record in the application file."*

For further assistance examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/William M Pierce/

Primary Examiner, Art Unit 3711